In the Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-959

VINCENT R. PERRIN, JR., Petitioner

versus

UNITED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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CITATIONS

IN THE
SUPREME COURT OF THE UNITED STATES

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v.

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The petitioner, Vincent R. Perrin, Jr., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on September 20, 1978.

OPINION BELOW

The opinion of the Court of Appeals, appears in 580 F. (2d) 730, and is attached as Appendix A. No opinion was rendered by the District Court for the Eastern District of Louisiana.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on September 20, 1978. A timely petition for rehearing was denied on November 15, 1978. A copy of the Notice to Deny Rehearing is attached as Appendix B.

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254.

QUESTIONS PRESENTED

I. Whether "commercial bribery" of a private employee, defined as a misdemeanor in 14 La. R.S. 73, is embraced within the meaning of the term "bribery" as used in the Travel Act, 18 U.S.C. 1952 (1976).

II. Does the record in this case contain sufficient evidence to support the conviction of Vincent R. Perrin, Jr., Petitioner.

III. Should Petitioner Perrin's trial have been severed from the trial of his co-defendants to preserve his constitutional right to a non-prejudicial, fair trial.

IV. Should Petitioner Perrin's motion for acquittal have been granted.

V. Whether the conflict of opinion between Circuits and the decision below raise significant problems concerning the administration and enforcement of the Travel Act.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1952 (1976) provides:

"Interstate and foreign travel or transportation in aid of racketeering enterprise.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to -

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any *business enterprise* involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the controlled Sub stances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury. As amended

Pub. 1. 91-513, Title II Sec. 701 (i)(2), Oct. 27, 1970, 84 Stat. 1282." (Emphasis supplied)

14 Louisiana Revised Statutes 73 provides:

"Commercial Bribery.

Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any *private* agent, employee, or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent's, employee's, or fiduciary's action in relation to the principal's or employer's affairs.

The agent's employee's, or fiduciary's acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under such circumstances shall also constitute commercial bribery.

Whoever commits the crime of commercial bribery shall be fined not more than five hundred dollars, or be imprisoned for not more than six months, or both."
(Emphasis supplied)

STATEMENT OF THE CASE

Petitioner Vincent R. Perrin, Jr. was convicted by a jury in the District Court for the Eastern District of Louisiana for having violated and conspiring to violate the Travel Act, 18 U.S.C. 1952 (1976). He was charged with having used interstate facilities to undertake a commercial bribery scheme, which occurred on and prior to July 16, 1975 in violation of the Louisiana Commercial Bribery Statute, 14 La. R.S. 73. The record shows that Petitioner Vincent R. Perrin, Jr.,

a subsurface geologist, had been employed for the first and only time by the "criminal shark" and "target" of the federal government on July 24, 1975, at which time he saw fleetingly for the first and only time before the Grand Jury investigation, one sheet of the "seismographic materials" which he was later told on August 4, 1975 that said "Seismographic material" "was stolen".

The facts found that co-defendants Levy and Lafont organized a corporation specifically designed to receive profits from the exploitation of stolen seismic exploration data. No proof exists that Petitioner Perrin had any knowledge whatsoever of said corporation, that it was to receive profits, as to who participated in the theft of said "seismographic data", as to who was the employer of the private person allegedly bribed by said alleged conspirators or any other details whatsoever in connection with the prior occurring alleged theft. The jury found Petitioner Vincent R. Perrin, Jr. guilty and he was sentenced to a term of two years which was suspended while Perrin was placed on probation.

Petitioner Vincent R. Perrin, Jr. appealed his case to the Court of Appeals for the Fifth Circuit. That Court, by a divided vote, found that commercial bribery was embraced by the term "bribery" as used in the Travel Act and that, therefore, petitioner was guilty of having violated that Act. Although this was a case of first impression for the Fifth Circuit, this question has already been presented and decided by two other Courts of Appeals, *U.S. v. Brecht*, 540 F. 2d 45 (1976) 2d Cir.,; and *U. S. v. Pomponio*, 511 F.2d 953 (1975) 4th Cir., cert. denied 423 U. S. 874, 96S. Ct. 142, 46 L. Ed. 2d 105. The decisions in these two cases are conflicting. The Second Circuit found that the misdemeanor

offense of commercial bribery is not within the meaning of the term bribery as used in the Travel Act and the Fourth Circuit found that "bribery" as used in the Travel Act does encompass the scheme of commercial bribery.

REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT BETWEEN CIRCUIT COURTS OF APPEALS (SECOND, FOURTH AND FIFTH) AS TO WHETHER OR NOT COMMERCIAL BRIBERY IS WITHIN THE PURVIEW OF THE FEDERAL TRAVEL ACT, 18 U.S.C. 1952 (1976 .)

Commercial bribery is a statutory offense commonly (as in the case at bar) classified as a misdemeanor punishable by imprisonment of not more than six months and/or a fine or not more than $500.00. It involves the bribing of private employees who are not public officials. Common law bribery involves the corruption and bribing of public officials in return for official action. The two are completely distinct crimes.

U.S. v. Pomponio, 511 F.2d 953 (1975), a Fourth Circuit case, was the first case to deal with the issue of whether or not the term "bribery" as used in the Travel Act, 18 U.S.C. 1952 (1976) encompasses the misdemeanor crime of commercial bribery. That Court held that to say that commercial bribery was not encompassed by the term "bribery" in the Travel Act would be "giving the term an unnaturally narrow reading.", 511 F. 2d at 957. Therefore the Travel Act was held to encompass the misdemeanor of commercial bribery.

The Second Circuit, in a later caee, however, held to the

contrary. *U. S. v. Brecht*, 540 F. 2d 45 (1976). After a lengthy summary of the legislative history of the Travel Act, excerpts of which legislative history are annexed hereto as Appendix C, and the differences set forth in New York law between bribery and commercial bribery, the Court concluded that "we see no evidence of congressional intent to bring 'commercial bribery' within the scope of the Travel Act." 540 F.2d at 50.

The Court continued:

> "The *Nardello* Court (*U. S. v. Nardello*, 393 U.S. 286 (1969) noted that the Travel Act was primarily designed to stem the clandestine flow of profits to organized crime **and gave 'shakedown rackets' and 'loansharking' as illustrations of methods used by organized crime to generate income. *Id.* at 295, 89 S. Ct. 534. To include 'commercial bribery', which typically is not a feature of organized crime and was not subsumed under the traditional offense of bribery, in the coverage of the Travel Act, simply because it contains the word 'bribery', would be to accept a literalism which the Court did not approve by its reasoning in *Nardello*.***540 F. 2d at 50.

A majority of the Hearing Panel of the Court below agreed with the former case, *U. S. v. Pomponio, supra*. Judge Thornberry reasoned that even though the primary impetus for the enactment of the Travel Act was to curb crimes of the underworld, it cannot be implied that only those kinds of crimes were the ones outlawed by the Travel Act. He also agreed with the *Pomponio* Court in stating that "brib-

ery" should be used in its generic sense and not limited to its common law definition.

However in a strong dissent, Judge Alvin Rubin stated that a classic limitation on criminal law enforcement is that "there should be no punishment without prior statutory mandate." He continues harshly by saying:

> "My brethren require four pages of dialectic to determine that the unadorned word 'bribery' in the Travel Act provides authority for the punishment by the Federal Government of 'commercial bribery.' The layman would scarcely choose so uncertain a route to define a clear proscription, nor indeed would the Second Circuit, *United States v. Brecht*, 2d Cir., 1976, 540 F.2d 45, *Cert. denied*, 1977, 429 U.S. 1123, 97S. Ct. 1160, 51 L.Ed. 2d 573." 580F. 2d 730, at 738

These conflicts justify the grant of certiorari to review the judgment below.

II. The record in this extremely complicated and technical case contains insufficient evidence to convict Petitioner Vincent R. Perrin, Jr., said record not affording proof beyond a reasonable doubt that Perrin:

(a) knew that the alleged conspiracy between his co-defendants and others existed;

(b) agreed to join said conspiracy;

(c) had any interest in or even knew of the existence of

the corporation organized by his co-defendants, or that Perrin had any interest therein;

(d) had any stake whatsoever in said alleged conspiracy, *U. S. v. Cianchetti*, 315 F(2d) 584 (2nd Cir 1977), *U. S. v. Di Re*, 159F(2d) 818 (2nd Cir. 1947) Affo. 322 U. S. 581

(e) knowingly, willfully and intentionally participated in any conspiracy or did or attempted to do something to further that conspiracy;

(f) knew that the alleged seismographic materials had been stolen on July 16, 1975 pursuant to a conspiracy to bribe private employee Willis, who was the government informer. Perrin was employed as a consulting geologist in behalf of the "criminal shark" and "target" of the Federal Government's prosecutors on July 24, 1975,eight days after the completion of said alleged theft and delivery of the stolen materials to one of Perrin's co-defendants. The majority opinion's conclusion that gravity maps were necessary for the geological analysis and exploitation of the stolen data so that the corporation formed to exploit said data would make a profit is merely the ipsi dixit of the government prosecutor and incontrovertibly proved to the contrary by the testimony of Petitioner Perrin and also by the testimony of expert witness Aycock.

III The government's case against Petitioner Perrin should have been severed. He was not a conspirator and his defense was antagonistic to those of his co-defendants.

Perrin took the stand at the trial after having freely testified before the Grand Jury.

IV. Petitioner Perrin's motion for acquittal should have been granted. Since Perrin was not a conspirator, the evidence contained in 44 government orchestrated tapes was extremely prejudicial to Petitioner Perrin and deprived him of his constitutional right to a fair trial, said tapes being pure hearsay as to Perrin. Furthermore, one of said tapes (Tape No. 6) conclusively proves that Perrin could not have possessed the necessary criminal and willful knowledge and intent to commit any crime as he was not even informed that the alleged seismographic materials were "stolen" until after Perrin was induced by the government informer to select a premarked interstate nexus, necessary to transform the alleged local commercial bribery theft misdemeanor into a federal felony under the Travel Act.

V. THE CONFLICT OF OPINION BETWEEN CIRCUITS AND THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE ADMINISTRATION AND ENFORCEMENT OF THE TRAVEL ACT.

In order to properly administer and enforce the Travel Act, it is necessary to know whether or not misdemeanor crimes, like commercial bribery, can legally be transformed into federal felonies through the use of the Travel Act.

There have been a number of cases reported since 1971 which have pointed out the fact that this statute may, if not interpreted correctly, cause substantial interference in federal-state relationships. *Rewis v. U. S.*, 401 U.S. 808, 91 S. Ct. 1056, 28 L.Ed. 2d 493 (1971); *U.S. v. Bass*, 404 U.S. 336, 92S.Ct. 515, 30 L.Ed. 2d 488 (1971); *U.S. v. Archer* 486 F.2d 670 (2nd Cir., 1973). As Judge Friendly said in the *Archer* case:

> "if read literally, (the Act) would cover a $10 payment to fix a traffic ticket if only the person desiring the fix walked across a state line to pay off the policeman." 486 F.2d at 679.

The legislatiive history is clear in that the Travel Act was a manifestation of Attorney General Robert Kennedy's attack on organized crime. The Travel Act was clearly designed to aim at those underworld leaders who direct business enterprises involving the proscribed activities and reside in one state but carry on their illegal activities in another. (See Appendix C attached hereto; see also *U.S. v. Nardello, supra* at 290; and *Rewis v. U.S., supra* at 811).

The dissenting opinion of Circuit Judge Alvin B. Rubin correctly reflects the intention of Congress that the Travel Act should proscribe and be limited to the use of interstate facilities by vice barons, organized criminals and racketeers, in furtherance of one or more business enterprises, which business enterprises are specifically limited to gambling, liquor, narcotics, prostitution, and extortion or bribery and corruption of local public officials, and does not even include murder. (See Appendix C page 43)

Realizing that underworld criminal activity was the target of this legislation, an expansive construction of this Act would not only place a heavy strain on federal-state relationships, but would transform traditionally local criminal con-

duct into federal crimes and require a substantial increase in federal police resources. (See *U.S. v. Bass, supra* at 349; *Rewis v. U. S., supra* at 812).

Finally, the already completed offense of which Petitioner Perrin was convicted is a local misdemeanor, punishable by a maximum of six months imprisonment and/or $500 fine. The Court below, on the basis of such isolated, minimal, inconsequential and non-essential use of interstate facilities as found in this record, declared that there was sufficient interstate commerce to transform a completed local misdemeanor into a federal felony.

Thus, Petitioner Vincent R. Perrin, Jr., who is not a vice-baron engaged in a business enterprise involving the proscribed activities but who for 20 years enjoyed an excellent reputation as a consulting subsurface geologist, as testified to by U.S. District Judge Lansing L. Mitchell, and who did not knowingly, willfully and intentionally commit any crime, was subjected to a prejudicial trial riddled with hearsay evidence along with two conspirators - simply because the word "bribery" appears in both the local and federal statutes. The great American bastion of freedom, based upon our constitutional guaranty of free speech and a fair trial was not built upon such dialectics nor will it long endure if such dialectics are permitted to veil the eyes of justice.

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment of the Fifth Circuit.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

State of Louisiana
Parish of Orleans

Personally appeared Perrin C. Butler who declared under oath that he is a member of the bar of the State of Louisiana, he is counsel of record for Petitioner, Vincent R. Perrin, Jr., he intends to enter his appearance in and become admitted to the Bar of the Supreme Court of the United States, that copies of the foregoing have been served upon the Solicitor General, Department of Justice, Washington, D.C. 20530, Eric Gisleson, Attorney, Organized Crime and Racketeering Field Office, U.S. Department of Justice, 500 Camp Street, New Orleans, Louisiana, 70130, and on all other attorneys of record in this case by depositing same in the United States Mail properly addressed with adequate postage this 14th day of December, 1978.

Sworn to and subscribed before
me this day of
December, 1978.

Notary Public
My Commission Expires
at my Death.

**UNITED STATES of America,
Plaintiff-Appellee,**

v.

**Vincent R. PERRIN, Jr., David L. Levy
and Duffy J. LaFont, Jr.,
Defendants-Appellants.**

No. 76-3926.

United States Court of Appeals,
Fifth Circuit.

Sept. 20, 1978.

Defendants were convicted before the United States District Court for the Eastern District of Louisiana at New Orleans, Morey L. Sear, J., of violating and conspiring to violate the Travel Act, and they appealed. The Court of Appeals, Thornberry, Circuit Judge, held that: (1) a Travel Act violation may be based on commercial bribery in violation of a state's commercial bribery statute; (2) Louisiana commercial bribery statute, since it prohibits behavior about which men of common intelligence need not guess, is not unconstitutionally vague; (3) sufficient interstate nexus existed to establish jurisdiction under the Travel Act, and (4) Government did not act improperly by artificially supplying interstate nexus to local crime in order to make out elements of Travel Act violations.

Affirmed.

Alvin B. Rubin, Circuit Judge, filed a dissenting opinion.

1. Commerce ⇐82.5

Although primary impetus for the Travel Act in Congress was fight against organized crime, limitation on Travel Act to outlaw only crimes "typically associat-

ed with the underworld" would be tantamount to implying additional elements to the Act; similarly, it is not a requirement of the Act that underlying crime be one typically associated with underworld or organized crime. 18 U.S.C.A. § 1952.

2. Commerce ⇐82.5

Membership in organized crime is not element of offense of violating Travel Act. 18 U.S.C.A. § 1952.

3. Bribery ⇐1(1)

Congress, in writing the Travel Act, did not intend to outlaw only the bribery of public officials while simultaneously prohibiting the disregard of a fiduciary duty in a myriad of other circumstances. 18 U.S.C.A. § 1952.

4. Bribery ⇐1(1)

Congress in enacting the Travel Act, which specifically outlaws extortion, bribery or arson in violation of state laws, intended "bribery" to be used in its generic sense and not to be limited to its common-law meaning, and thus Travel Act violation could be based on commercial bribery in violation of state commercial bribery statute. 18 U.S.C.A. § 1952; LSA–R.S. 14:73.

See publication Words and Phrases for other judicial constructions and definitions.

5. Bribery ⇐2

Louisiana commercial bribery statute, since it prohibits behavior about which men of common intelligence need not guess, is not unconstitutionally vague. LSA–R.S. 14:73.

6. Criminal Law ⇐1134(3)

Where scheme involving theft of certain seismic exploration charts and organization of corporation to exploit stolen data was far within core meaning of Louisiana commercial bribery statute,

Court of Appeals did not have to consider whether statute was overly broad. LSA–R.S. 14:73.

7. Bribery ⇐1(1)

Where it was undisputed by defendants that gravity maps, for which appropriate order forms were sent via interstate bus, would have been used to exploit stolen seismic data, requirements for jurisdiction under the Travel Act were met in connection with indictment charging defendants with use of interstate facilities with intent to promote commercial bribery scheme in violation of laws of Louisiana. 18 U.S.C.A. § 1952; LSA–R.S. 14:73.

8. Bribery ⇐1(1)

There is no requirement that use of interstate facilities be essential to bribery scheme to support jurisdiction under the Travel Act; it is enough that interstate travel or use of interstate facilities makes easier or facilitates unlawful activity. 18 U.S.C.A. § 1952.

9. Bribery ⇐1(1), 11

One defendant's telephone call to Texas for purpose of ordering corresponding gravity maps to be used to exploit stolen seismic data constituted sufficient use of interstate facilities to support defendants' conviction under count of indictment charging that defendant made such a call; moreover, evidence supported Travel Act jurisdiction under count charging use of interstate facilities to promote commercial bribery scheme where defendants directed another to make interstate telephone call. 18 U.S.C.A. § 1952; LSA–R.S. 14:73.

10. Criminal Law ⇐37(6)

Government, which reminded informer to be a follower and not a leader in bribery scheme, did not act improperly by artificially supplying interstate nexus to local crime in order to make out ele-

ments of Travel Act jurisdiction, especially in view of evidence making it clear that one defendant knew significance of selecting an out-of-state source for gravity maps used to exploit stolen seismic data and fully appreciated fact that out-of-state supplier was less likely to notice leasing activity in northern Louisiana. 18 U.S.C.A. § 1952.

11. Commerce ⇐82.10

Under the Travel Act, specific intent is required to violate state law but there is no requirement that defendant either have knowledge of use of interstate facilities or specifically intend to use interstate facilities, and thus there is no necessity to inform jury that defendant had to intend to use interstate facilities. 18 U.S.C.A. § 1952.

12. Commerce ⇐82.5

Under a substantive Travel Act charge, it is enough for jury to determine that defendant in fact used interstate facilities, and defendants' argument that Government improperly obtained jurisdiction was for district court to determine as matter of law. 18 U.S.C.A. § 1952.

13. Criminal Law ⇐622(2)

Defendant, who proffered no evidence that was denied admission because of joint nature of trial, was not entitled to separate trial just because he wished to comment on failure of other defendants to testify.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before WISDOM, THORNBERRY and RUBIN, Circuit Judges.

THORNBERRY, Circuit Judge:

Appellants, Vincent Perrin, Jr., David Levy, and Duffy LaFont, Jr., appeal from jury convictions for violating and conspiring to violate the Travel Act.[1] The indictment charged that the appellants[2] used interstate facilities with the intent to promote a commercial bribery scheme in violation of the laws of the State of Louisiana.[3] The proof adduced at trial demonstrated that appellant LaFont approached an employee of the Petty-Ray Geophysical Company, Roger Willis, and proposed that Willis steal from his employer certain seismic exploration charts. In return for the theft, Willis was to receive a percentage of the profits of a corporation specifically organized by appellants Levy and LaFont

1. 18 U.S.C. § 1952 reads in pertinent part:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the

to exploit the stolen data. Appellant Perrin, a consulting geologist, was to interpret and analyze the data stolen from Petty-Ray.

All the defendants were found guilty of the conspiracy count. Perrin was also found guilty of two substantive counts charged in the indictment. Levy and LaFont were adjudged guilty of four substantive violations of the Act. Perrin received a one-year suspended sentence on each count. Defendants LaFont and Levy received a two-year sentence for each conviction. All of the sentences are to run concurrently. Since no appellant challenges the sufficiency of the evidence, it is unnecessary to burden this opinion with further factual details.

Treasury. As amended Pub.L. 91-513, Title II, § 701(i)(2), Oct. 27, 1970, 84 Stat. 1282.

2. Along with the appellants, Albert Izuel and Jim Haddox were also charged in the indictment. Izuel and Haddox were severed by the trial court on the second day of trial and the charges against them were ultimately dismissed.

3. Louisiana's Commercial Bribery Statute reads:

> Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any private agent, employee, or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent's, employee's, or fiduciary's action in relation to the principal's or employer's affairs.
>
> The agent's, employee's, or fiduciary's acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under such circumstances shall also constitute commercial bribery.
>
> . . . . .
>
> Whoever commits the crime of commercial bribery shall be fined not more than five hundred dollars, or be imprisoned for not more than six months, or both.

14 La.R.S. 73

I.

In their first point of error, the appellants contend that commercial bribery as defined in 14 La.R.S. 73 is not "bribery" within the meaning of the Travel Act. While this is a question of first impression in this circuit, sister circuits have split over the issue. In *United States v. Brecht*, 540 F.2d 45 (2 Cir. 1976) the Second Circuit held that Congress did not intend to include commercial bribery within the meaning of "bribery" as used in the Travel Act. The Second Circuit noted that the legislative history of the Travel Act shows that Congress enacted the Travel Act "for the purpose of punishing interstate travel in aid of racketeering enterprises engaged in by organized crime." 540 F.2d at 49. Furthermore, the court observed that commercial bribery "is not a feature of organized crime and was not subsumed under the traditional offense of bribery." *Id.* at 50. In *United States v. Pomponio*, 511 F.2d 953 (4 Cir. 1975), *cert. denied*, 423 U.S. 874, 96 S.Ct. 142, 46 L.Ed.2d 105, the Fourth Circuit reached the opposite conclusion. In *Pomponio*, the court held that the term "bribery" as used in the Travel Act includes commercial bribery. In reaching its conclusion, the Fourth Circuit noted that all bribery involves moral turpitude and that in *United States v. Nardello*, 393 U.S. 286, 89 S.Ct. 534, 539, 21 L.Ed.2d 487 (1969), the Supreme Court cautioned against an unnaturally narrow reading of the terms of the Travel Act. 511 F.2d at 956-957.

4. At oral argument, the defendants urged that the Travel Act applied only to organized crime and that the single instant of commercial bribery in this case did not amount to organized crime. Membership in organized crime is not an element of the offense. *United States v. Hedge*, 462 F.2d 220 (5 Cir. 1972). *See also United States v. Polizzi*, 500 F.2d 856 (9 Cir. 1974), *cert. denied*, 419 U.S. 1120, 95 S.Ct. 802,

[1, 2] For the reasons enumerated below, we believe that *Pomponio* is the correct reading of the Travel Act and the term "bribery" is a generic one not limited to its meaning in common law. First, we recognize as did the Second Circuit in *Brecht*, that the primary impetus in Congress for the Travel Act was the fight against organized crime. We cannot imply from this recognition, however, that only crimes "typically associated with the underworld" are the ones outlawed by the Travel Act. Such a limitation on the Travel Act would be tantamount to implying an additional element to the Act.[4] The Supreme Court has recently held that the Hobbs Act, 18 U.S.C. § 1951, does not contain a "racketeering" element. *United States v. Culbert*, —— U.S. ——, 98 S.Ct. 1112, 55 L.Ed.2d 349 (1978). Similarly, we find that it is not a requirement of the Travel Act that the underlying crime be one typically associated with the underworld or organized crime. We genuinely doubt our expertise to make such a determination.[5]

Furthermore, common experience has taught us that organized crime does not limit bribery to bribery of public officials. Few will ever forget the most notorious commercial bribe in American history—the bribing of the 1919 Chicago White Sox baseball team. In that sad episode, Abe Attell, supposedly an employee of the New York gambler, Arnold Rothstein, bribed eight players of the Chicago White Sox to throw the first

42 L.Ed.2d 820 (1975); *Marshall v. United States*, 355 F.2d 999 (9 Cir. 1966), *cert. denied*, 385 U.S. 815, 87 S.Ct. 34, 17 L.Ed.2d 54 (1966).

5. Alternately, one could argue that there is no faster way to make a certain crime one commonly found in the repartee of the underworld than to make a judicial pronouncement that the crime is not one used commonly by the underworld.

and second games of the 1919 World Series to the Cincinnati Reds. Attell paid Eddie Cicotte, Oscar "Happy" Felsch, Chick Gandil, "Shoeless" Joe Jackson, Freddy McMullin, Charles "Swede" Risberg, George "Buck" Weaver, and Claude Williams about $70,000 for their participation in the scheme.[6] *See* E. Asinof, Eight Men Out (1963).

[3] Second, it is clear, that the Congress itself has not limited bribery concepts to common law definitions. In various places in the United States Code, Congress has outlawed bribery of public officials,[7] bribery of witnesses,[8] bribery of athletes,[9] bribery of bank officers,[10] bribery of agents and employees of carriers by rail,[11] bribery of licensed classifiers of cotton or any grain,[12] and bribery in connection with quiz shows.[13] Certainly, Congress, in writing the Travel Act, did not intend to outlaw only the bribery of public officials while simultaneously prohibiting the disregard of a fiduciary duty in a myriad of other circumstances.

Last, we agree with the Fourth Circuit that *United States v. Nardello, supra*, presents a ready parallel to the case at bar. In *Nardello*, the defendant was charged with a scheme involving the unlawful activity of blackmail in violation of the laws of Pennsylvania. 89 S.Ct. at 535. Since the Travel Act specifically outlaws only "extortion, bribery, or arson in violation of the laws of the State

6. After the bribe was discovered a small boy is said to have approached "Shoeless" Joe Jackson and exclaimed, "Say it ain't so, Joe."
Chicago Herald & Examiner, September 30, 1920.

7. 18 U.S.C. § 201

8. 18 U.S.C. § 201

9. 18 U.S.C. § 224

10. 18 U.S.C. § 215

11. 49 U.S.C. § 1(17)

in which committed or of the United States," Nardello argued that blackmail in violation of State law was not within the ambit of the Act.[14] Furthermore, Nardello urged that in using the term extortion, Congress intended only its common law meaning of acts by a public official. *Id.* at 538. In rejecting Nardello's arguments the Court stated:

> In light of the scope of the congressional purpose we decline to give the term "extortion" an unnaturally narrow reading, cf. *United States v. Fabrizio*, 385 U.S. 263, 266–267, 87 S.Ct. 457, 459, 17 L.Ed.2d 351 (1966), and thus conclude that the acts for which appellees have been indicted fall within the generic term extortion as used in the Travel Act.

89 S.Ct. at 539.

[4] Applying these concepts to the instant case, we believe that Congress intended the term "bribery" to be used in its generic sense and not be limited to its common law meaning. *See also United States v. Turley*, 352 U.S. 407, 77 S.Ct. 397, 1 L.Ed.2d 430 (1957) (refusing to define "stolen" as used in the Dyer Act, 18 U.S.C. § 2312, as meaning common law larceny). We believe it would be incongruous to read the term "extortion" in its generic sense while reading the term "bribery" in the literal common law sense. We therefore conclude that a Travel Act violation may be based on

12. 7 U.S.C. §§ 60, 85

13. 47 U.S.C. § 509

14. Nardello could not have been charged under Pennsylvania extortion statute because Pennsylvania defined extortion as did the common law, *i. e.*, a public official who under color of office obtains the property of another not due either to the office or the official.

89 S.Ct. at 536.

commercial bribery in violation of a state's commercial bribery statute.

II.

[5, 6] In their next point of error, the appellants contend that the Louisiana Commercial Bribery Statute is unconstitutional in that it is vague and overly broad. While the Louisiana Supreme Court has not passed on these arguments, other courts have unanimously rejected constitutional attacks on similar commercial bribery statutes. *See State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963), *app. dismissed*, 375 U.S. 9, 84 S.Ct. 72, 11 L.Ed.2d 40 (1963); *People v. Nankervis*, 330 Mich. 17, 46 N.W.2d 592 (1951); *People v. Davis*, 33 N.Y.Cr.R. 460, 160 N.Y.S. 769 (1915); Annotation, Validity and Construction of Statutes Punishing Commercial Bribery, 1 A.L.R.3d 1350, 1357–59. Since the Louisiana Commercial Bribery Statute prohibits behavior about which "men of common intelligence" need not guess, the statute is not unconstitutionally vague. *Zwickler v. Koota*, 389 U.S. 241, 249, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967); *Baggett v. Bullitt*, 377 U.S. 360, 367, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964); *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). Furthermore, the instant scheme was so far within the core meaning of the statute, we need not consider whether the statute is overly broad.

III.

The appellants contend that the interstate nexus supplied by their use of in-

15. We will not discuss the use of interstate facilities charged in Counts Five and Six since only Levy and LaFont were convicted under these counts.

16. We note that the Seventh Circuit in *Altobella* and *Isaacs* has read the Travel Act more narrowly than the Fourth Circuit in *United*

terstate facilities was isolated, minimal, inconsequential, and nonessential to the commercial bribery scheme and insufficient to establish jurisdiction under the Travel Act.

The indictment charged in Count Two that the appellants used interstate facilities to promote their commercial bribery scheme when Willis, on the instructions of Levy, LaFont, and Perrin, called Gravity Map Service in Richmond, Texas, in order to purchase corresponding gravity maps for the stolen seismic data. Gravity Map Service, sent appropriate order forms to Willis via interstate bus. Count Three of the indictment charged that David Levy made a second interstate phone call to Gravity Map Service in Texas for the purpose of ordering corresponding gravity maps.[15]

The appellants point to *United States v. Altobella*, 442 F.2d 310 (7 Cir. 1971) and *United States v. Isaacs*, 493 F.2d 1124 (7 Cir. 1974), *cert. denied*, 417 U.S. 976, 94 S.Ct. 3183, 41 L.Ed.2d 1146, in support of their contention that the interstate contacts were insufficient to establish jurisdiction under the Travel Act.[16] In *Altobella* and *Isaacs*, the Seventh Circuit held that the interstate travel of a bribery check was an insufficient interstate nexus under the Travel Act to support jurisdiction.

The government argues that in *Isaacs* and *Altobella* the interstate nature of the checks' travels was not essential to the extortion scheme while in the instant

States v. LeFaivre, 507 F.2d 1288 (4 Cir. 1974), *cert. denied*, 420 U.S. 1004, 95 S.Ct. 1446, 43 L.Ed.2d 762 (1975) and the Sixth Circuit in *United States v. Eisner*, 533 F.2d 987, 992 (1976). Since the precise question is not before us, we decline to express an opinion as to the correct reading.

case the obtaining of gravity maps was an essential element of the bribery scheme. The government urges that without the corresponding gravity maps, Perrin, the geologist, would have been unable to analyze the stolen data and the corporation formed to exploit the data would not have made a profit and, ultimately, the bribe to Willis could not have been paid. The appellants, in turn, hotly contest that the gravity maps were an essential part of the scheme. At one point in his brief, Perrin states, "Sight must not be lost of the fact that the gravity maps were not an essential aspect of the completed bribery scheme. Gravity maps are but one aspect of the base materials needed by Perrin or any other consulting geologist in the performance of his duties. . . ."

[7–9] We simply need not determine if the gravity maps were an essential part of the scheme. Since it is undisputed by the appellants that the gravity maps would have been used to exploit the stolen data, the requirements for jurisdiction under the Travel Act are met. There is no requirement that the use of interstate facilities be essential to the scheme: it is enough that the interstate travel or the use of interstate facilities makes easier or facilitates the unlawful activity. *Rewis v. United States*, 418 F.2d 1218, 1221 (5 Cir. 1969), *reversed on other grounds*, 401 U.S. 808, 91 S.Ct. 1056, 28 L.Ed.2d 493 (1971); *United States v. Miller*, 379 F.2d 483, 486 (7 Cir. 1967), *cert. denied*, 389 U.S. 930, 88 S.Ct. 291, 19 L.Ed.2d 281 (1967). Levy's telephone call to Richmond, Texas was sufficient use of interstate facilities to support conviction under Count Three. Moreover, the evidence supports Travel Act jurisdiction under Count Two since the appellants directed Willis to make an interstate phone call and it is sufficient

that the appellants caused the use of interstate facilities. *United States v. Hedge*, 462 F.2d 220, 223 (5 Cir. 1972).

IV.

[10] In their next point of error, the appellants contend that even if jurisdiction under the Travel Act is appropriate, the jurisdiction was improperly manufactured by the government. The appellants rely on *United States v. Archer*, 486 F.2d 670 (2 Cir. 1973). Before we can begin any meaningful discussion of *Archer*, we need to consider the explanation given by the *Archer* court itself:

> While the Government professes alarm at the precedential effect of our decision, we in fact went no further than to hold that when the federal element in a prosecution under the Travel Act is furnished solely by undercover agents, a stricter standard is applicable than when the interstate or foreign activities are those of the defendants themselves and that this was not met here. We adhere to that holding and leave the task of further line-drawing to the future.

486 F.2d 685–86.

Under this explanation it would be enough to note that in the instant case the interstate nexus alleged in Count Three of the indictment was supplied by a phone call made by appellant Levy, not a government agent.

We have decided, however, to examine the appellants' argument in a broader scope to determine if the government improperly supplied the interstate element in this prosecution. First, we cannot condemn the fact that the government informer was involved in the interstate element of the crime. *Cf. United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973). Certainly,

Willis played the part of a willing co-conspirator and as such he would be expected to be involved in all aspects of the bribery scheme. This is not to say, however, that Willis at the behest of the government could unilaterally supply the interstate element to a local bribery scheme and thereby transform the bribery scheme into a Travel Act violation. For example, Willis could not at the government's direction cross the Sabine River merely to call one of the co-conspirators in New Orleans, Louisiana.

In the instant case, it is clear that the government reminded Willis to be a follower and not a leader in the scheme. Furthermore, the evidence at trial made clear that Perrin, as the consulting geologist, selected the out of state source for the gravity maps. Perrin insists that the government had pre-marked the geological directory so as to force Perrin into selecting an out of state source. The government replies that no particular supplier was pre-marked in the directory. Whatever the merits of this tangential dispute, the evidence makes clear that Perrin knew the significance of selecting an out of state source for the gravity maps and that he fully appreciated the fact that an out of state supplier was less likely to notice leasing activity in northern Louisiana.

We do not believe that the government acted improperly by artificially supplying the interstate nexus to a local crime in order to make out the elements of a Travel Act violation.

17. LaFont requested the following charge:

> If the jury finds that the use of interstate facilities in furtherance of the criminal charge was the calculated result of actions of the government and not the unprovoked actions of the defendant then in that event the jury shall find the defendant not guilty by reason of entrapment.

V.

Next, the appellants contend that the trial judge erred in not granting the appellants' requested instructions on entrapment. Traditionally, entrapment exists "when the criminal design originated with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute," *Sorrells v. United States*, 287 U.S. 435, 442, 53 S.Ct. 210, 212, 77 L.Ed. 413 (1932). *See also Hampton v. United States*, 425 U.S. 484, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976); *United States v. Russell, supra*; *Sherman v. United States*, 356 U.S. 369, 78 S.Ct. 819, 2 L.Ed.2d 848 (1958). The appellants do not complain of the trial judge's failure to give the traditional charge, nor could they since it is clear that the government did not know of the scheme until after Willis had been approached with the bribery offer. Instead, the appellants insist that they are entitled to an entrapment charge based on *United States v. Archer, supra*. In essence, the appellants want the trial judge to inform the jury to acquit the defendants if it finds that the defendants had no predisposition to use interstate facilities.[17]

[11, 12] Manifestly, the trial court is under no obligation to give such a charge.[18] Under the Travel Act, specific intent is required to violate state law. There is no requirement that the defendant either have knowledge of the use of

18. Arguably the district court opinion in *United States v. Archer*, 355 F.Supp. 981, 987 (S.D. N.Y.1972) supports the appellants' position. To the extent that it does, we specifically disapprove of that holding.

interstate facilities or specifically intend to use interstate facilities. *United States v. Doolittle*, 507 F.2d 1368, 1372, *aff'd en banc*, 518 F.2d 500 (5 Cir. 1975), *cert. denied*, 423 U.S. 1008, 96 S.Ct. 439, 46 L.Ed.2d 380 (1975); *United States v. LeFaivre*, 507 F.2d 1288, 1296 n.10 (4 Cir. 1974), *cert. denied*, 420 U.S. 1004, 95 S.Ct. 1446, 43 L.Ed.2d 762 (1975); *United States v. Roselli*, 432 F.2d 879 (9 Cir. 1970), *cert. denied*, 401 U.S. 924, 91 S.Ct. 883, 27 L.Ed.2d 828 (1971); *United States v. Hanon*, 428 F.2d 101 (8 Cir. 1970), *cert. denied*, 402 U.S. 952, 91 S.Ct. 1608, 29 L.Ed.2d 122 (1971); *United States v. Miller*, 379 F.2d 483 (7 Cir.), *cert. denied*, 389 U.S. 930, 88 S.Ct. 291, 19 L.Ed.2d 281 (1967). *But see United States v. Prince*, 529 F.2d 1108 (6 Cir. 1976). Congress, in passing the Travel Act, determined that a predicate of federal jurisdiction is the travel in interstate or foreign commerce or the use of interstate facilities. *United States v. LeFaivre, supra*. Consequently, there is no necessity that the jury be informed that the defendants must intend to use interstate facilities. It is enough for the jury to determine, under a substantive Travel Act charge, that the defendants, in fact, used interstate facilities. The defendants' argument that the government improperly obtained jurisdiction is for the court to determine as a matter of law, as we have done in Section IV, *supra*.

In *Archer*, Judge Friendly distinguished between the court's holding regarding the improper manufacture of jurisdiction and the function of the entrapment charge: [19]

19. Related to the improper manufacture of jurisdiction is the power of a federal court to dismiss prosecution because of impermissible government involvement in the enterprise. This is the question not reached by the *Archer*

It is not a sufficient answer that if the issue here were simply one of entrapment, the jury would have been justified in finding, under the entirely correct instruction on the subject given by the judge, that Klein had a propensity for crime, requiring no encouragement from the federal agents. Our holding is rather that when Congress responded to the Attorney General's request to lend the aid of federal law enforcement to local officials in the prosecution of certain crimes, primarily of local concern, where the participants were engaging in interstate activity, it did not mean to include cases where the federal officers themselves supplied the interstate element and acted to ensure that an interstate element would be present.

486 F.2d at 682.

VI.

[13] Finally, Perrin contends that the trial court erred by refusing to sever the trial of defendant Perrin from the trial of the other defendants. Using *Bird v. Wainwright*, 428 F.2d 1017 (5 Cir. 1970) and *United States v. Martinez*, 486 F.2d 15 (5 Cir. 1972) as our guide, it becomes apparent that Perrin proffered no evidence that was denied admission into evidence because of the joint nature of the trial. Furthermore, Perrin is not entitled to a separate trial just because he wishes to comment on the failure of the other defendants to testify. *Gurleski v. United States*, 405 F.2d 253 (5 Cir. 1968).

Court, *id.* at 676, but the Supreme Court in *United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973), has explicitly held that this inquiry is not a part of the entrapment question.

VII.

We have examined the appellants' remaining contentions and have found them unworthy of comment. We therefore conclude that the appellants were properly convicted and their convictions must be affirmed.

AFFIRMED.

ALVIN B. RUBIN, Circuit Judge, dissenting:

Sound public policy might induce Congress to proscribe corruption of private persons in the Travel Act. In my view, however, it has not yet seen fit to do so. Therefore, I respectfully dissent.

One of the classic limitations in the enforcement of criminal law, which is embedded implicitly in the Due Process Clause of the Constitution, is summed up in the phrase, "Nulla poena sine lege"—there should be no punishment without prior statutory mandate. My brethren require four pages of dialectic to determine that the unadorned word "bribery" in the Travel Act provides authority for the punishment by the Federal Government of "commercial bribery." The layman would scarcely choose so uncertain a route to define a clear proscription, nor indeed would the Second Circuit, *United States v. Brecht*, 2 Cir. 1976, 540 F.2d 45, *cert. denied*, 1977, 429 U.S. 1123, 97 S.Ct. 1160, 51 L.Ed.2d 573.

We cannot truly ascribe to Congress any intention either to include or exclude commercial corruption; Congress did not deal with the problem. As one scholar has said:

> The difficulties of so-called interpretation arise when the Legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the

> judges have to do is, not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.[1]

We are thus in the position, in resolving this case, of deciding what Congress would have done had it debated the appropriate scope of the Travel Act with regard to commercial corruption.

My brethren find these footprints to guide them on the trail of meaning: first, common experience teaches us that organized crime may attempt to corrupt private citizens; second, Congress, in other statutes, has proscribed bribery of persons who are not public officials; third, the Supreme Court, in *United States v. Nardello*, 1969, 393 U.S. 286, 89 S.Ct. 534, 21 L.Ed.2d 487, refused to limit the word "extortion" to its common law meaning and defined it to include blackmail.

With deference, I must say that much of this seems to me to constitute reasoning backward from the result desired. That common experience teaches us the breadth of organized crime is not a *reason* to say that Congress *did* include commercial corruption in the word "bribery," although it may well someday prove ample reason for a legislator to decide to do so. Indeed, what "our common experience" teaches us as judges about organized crime, I do not know; I know nothing about it that may be noticed judicially. Federal Rules of Evidence, Rule 201. Moreover, whatever common experience has taught judges in this regard is, in any event, presumably known also by legislators. We thus return to the question why, in the face of such experience, did Congress not proscribe commercial bribery specifically. That inquiry is all the more troublesome because, as the majority notes, Congress elsewhere saw fit to proscribe specifically, and not generically, forms of bribery that go beyond the offense as known at common law.

1. Gray, Nature and Sources of the Law: Statutes 173 (1921 ed.).

Let me place a few grains on the side of the scale counterbalancing the arguments used by my brethren.[2] As set forth in *United States v. Brecht, supra*, only 13 states had commercial bribery statutes in 1960, the year before the Travel Act was enacted. *United States v. Brecht, supra*, 540 F.2d at 48. At least six states, as recently as 1976, did not even mention the word "bribery" in defining the offense now commonly called commercial bribery. *Id.* at 49, note 6. In Louisiana, as in New York and most other states that proscribe commercial bribery, the offense prohibited is a misdemeanor. It is punishable in Louisiana by a maximum of imprisonment for six months and a fine of no more than $500, or both. LSA–R.S. 14:73. Because of the majority's holding, the added element of interstate travel escalates commercial bribery to a federal crime, and to a felony punishable by imprisonment for up to five years and

2. The Report of the Committee on the Judiciary, United States Senate, to accompany S. 1437, the proposed new federal criminal code, S.R. 95-605, 95th Cong., 2d Sess. (1977), at 388, interprets the present bribery law as contemplating "the violation of the public servant's duty." It later states, seeming to make ambiguous what was clear, that the bribe itself is a "*quid pro quo* for the violation of an official or *legal* duty." *Id.* (Emphasis supplied.) Assuming that an expansive reading of this interpretation correctly construes 18 U.S.C. § 1952, the Travel Act would still appear to be aimed at a narrower range of conduct than is reached by Louisiana's commercial bribery statute; under the wording of the state statute, *see* Memorandum Opinion at 7111, note 3, *supra*, it is not an element of the of-

a fine of up to $10,000, or both. 18 U.S.C. § 1952(a).[3]

None of these factors is conclusive. Together, however, they weigh enough at least to balance, and, in my opinion, to tilt the scales to the other side. I would not read a criminal statute whose meaning is so ambiguous as justifying the interpretation placed on it by the majority and our colleagues of the Fourth Circuit.

Some passing reference to the factual context of this case may be appropriate in conclusion: the fish the Government caught in this Travel Act net were small fry. Its plan was to land a person who is reputed to be a criminal shark. Without reciting the facts in detail, it is evident that his possible involvement was scent to the F.B.I. The target refused the bait offered him by Willis, Perrin, Levy, and LaFont. Each of them, if guilty of anything, can be prosecuted under state law. I would leave them and the record of the trial to state authorities; I would leave to Congress the amendment of the statute to make the mesh of the net smaller if it seeks to catch the commercially corrupt in the future.

fense that the bribe-giver seek a violation of the bribe-taker's legal duties.

3. The offenses proscribed by the Pennsylvania blackmail statutes involved in *United States v. Nardello, supra*, Act of June 24, 1939, Pub.L. 872, §§ 802, 803 (current version at 18 Pa.C.S.A. §§ 3923(a)(2) and (a)(3)), are punishable under current law by two years of imprisonment, 18 Pa.C.S.A. §§ 106(d) and 1104(2), the same maximum state penalty for political bribery, Act of June 24, 1939, Pub.L. 872, § 4318 (current version at 18 Pa.C.S.A. § 4702), unless the offender threatens "to commit a crime" or makes a threat "with intent to influence a judicial or administrative proceeding," 18 Pa.C.S.A. § 4702(c), in which case the maximum penalty is seven years of imprisonment, 18 Pa.C.S.A. § 1103(3).

APPENDIX B

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

Edward W. Wadsworth
Clerk

Tel 504-589-6514
600 Camp Street
New Orleans, La. 70130

November 15, 1978

TO ALL PARTIES LISTED BELOW:

NO. 76-3926 — U.S.A. vs. VINCENT R. PERRIN, JR., DAVID L. LEVY, and DUFFY J. LA FONT, JR.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Apellate Procedure; Local Fifth Circuit Rule 16) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Sally Hayward

Deputy Clerk

cc: Mr. Perrin C. Butler
Mr. John T. Mulvehill
Mr. Henry L. Klein
Mr. Russell Schonekas
Mr. K. Eric Gisleson

APPENDIX C

LEGISLATIVE HISTORY OF THE TRAVEL ACT

Quoted excerpts of Hearings before the Senate Judiciary Committee, 87th Congress, First Session (S. 1653 and H.R. 6572) June 6, 19, 20, 21 and 26, 1961.[1]

Page 1

STATEMENT OF HON. ROBERT F. KENNEDY
ATTORNEY GENERAL OF THE UNITED STATES

MR. KENNEDY:

Mr. Chairman, I appreciate this opportunity to discuss legislation which we have proposed and which we believe is essential if effective action is to be taken against organized crime.

On the 17th of May, I testified before the House Committee on the Judiciary in support of six of the proposals which are before you today. In addition, this committee has before it S. 1658 to amend the Slot Machine Act. I would like at this time to submit for the record my testimony before the House committee . . .

> Mr. Chairman, I am here today supporting proposed legislation which we believe can be extremely effective in combatting organized crime and racketeering. These proposals have been developed in the Department over a period of time to aid and assist local law enforcement officers in controlling hoodlums and racketeers, who have become so rich and so powerful that they have outgrown local authorities . . .

1. Every statement contained in this entire appendix is quoted verbatim from the hearings. To save time of the typist, quotation marks have been omitted. In any instance where the person making the statement quotes from another source, the quoted source will appear in this appendix as quotes rather than inner quotes. Counsel has supplied all emphasis by italicizing. In the interest of brevity of typing, the term (emphasis supplied) does not appear on each occasion emphasis was supplied.

Page 2

As has been pointed out so often, gambling, liquor violations, narcotics, bribery, and *corruption of local officials* and labor racketeering and extortion go hand in hand . . .

Our package of bills is designed to prohibit the use of interstate facilities for the conduct of the many unlawful enterprises which make up organized crime today . . .

From huge gambling profits flow the funds to bankroll the other illegal activities I have mentioned including the *bribery of local officials* . . .

A brief explanation of the method by which the funds are obtained by the bigtime gambling operator may be useful at this time.

Many persons think of the corner handbook operator or the neighborhood merchant, who sells a numbers ticket to him, as the person to whom we refer when we talk of the gambling racketeer. This is about as accurate as describing an iceberg as a section of ice floating on top of the water . . .

Page 3

On the surface is the handbook operator. However, he is not a man of unlimited resources. He must balance his books so that he will lose no more on the winner than has been bet on the other horses in a race, after his percentage has been deducted. Therefore he

must reinsure himself on the race in much the same fashion that casualty insurance companies reinsure a risk that is too great for it to assume alone. To do this the bookmaker uses the "layoff" man, who for a commission, accepts the excess wager.

The local layoff bettor also will have limited funds and his layoff bets may be out of balance. When this occurs he calls the large layoff bettors, who because of their funds, can spread the larger risk. These persons are gamblers who comprise a nationwide syndicate or combine. They are in close touch with each other all the time and they distribute the bets among themselves so that an overall balance is reached on any horserace . . .

One of the largest operators in the combine does a layoff business of $18 million a year . . .

The term "gambler" is a misnomer for these persons. They accept money that the small gamblers wager but they do not gamble at all. This is further illustrated graphically by what we know as the numbers racket . . .

Some notorious individuals, whose names you would immediately recognize, had interests in a numbers bank but lived in a resort town far from the scene of operation. Every month a messenger carried the profits of the numbers racket from the scene of operations to the resort town. One of the payments was in excess of $250,000. Thus, the persons reaping the profit from the illegal activity remained

beyond the reach of the law enforcement officials at the place of operation and committed no crime in the State where they lived.

If our bill is enacted we will be able to prosecute the courier who carries the funds across States lines and in conjunction with the aiding and abetting statute (18 U.S.C.2) we will be able to prosecute the person who caused the courier to travel — the kingpin . . .

Page 4

These people can conduct their businesses by telephone. When local authorities get close to them, they merely pickup stakes and move to another jurisdiction. The best example of this moving to frustrate local police, is the case of a man who started operations as a layoff man in the Midwest in 1946. He moved to another town in 1949 and then to Newport, Ky., in 1950. In 1952, under pressure of the Kefauver investigations into organized crime, he moved to Montreal, Canada. When the Royal Canadian Mounted Police raided his establishment he moved back to Newport, Ky.

We can follow these people from State to State and prosecute them for the very activities which now make a mockery of local law enforcement if this travel bill is enacted . . .

Another example of the type of situation which we are trying to curb in proscribing the interstate travel in furtherance of an unlawful activity is the situation which arose in Hot

Springs, Ark., in 1960. A printing company in Jefferson Parish, La., receives race wire information from Chicago bookmakers and disseminates the data to gambling establishments in sections of the South and Southwest. The company is owned by a racketeer, since deported, and his race service manager of New Orleans. The manager, while in Hot Springs in March of 1960 got into a violent argument with the owner of the race wire service there. The Hot Springs man told the New Orleans man to stay in New Orleans as he could operate his business without help.

In May of 1960, the owner of the Hot Springs service traveled to Chicago and visited a Chicago rackets overload. The Hot Springs man sought assistance in curtailing the activities of the New Orleans group in seeking to take over his race wire service. If we could show the existence of race wire services in New Orleans and Hot Springs and the travel on the part of the New Orleans man to expand the New Orleans service and the travel of the Hot Springs man to protect his interest in the Hot Springs service we could prosecute both of these top racketeers with the enactment of the proposed bill . . .

Page 5

We have *skirted the area of social gambling by limiting the proposed statute* to *gambling, as a business,* which violates State or Federal law. In this limited aspect, the enactment of the bill will be a tremendous tool for stamping out the vicious and dangerous criminal combinations.

Mr. Chairman, this bill is vital. We need it. Local law enforment officials need it. The country needs it . . .

Page 10

Mr. Chairman, in conclusion, I would like to read into the record, the comments of Mr. J. Edgar Hoover, director of the FBI, about the bills I have discussed. Mr. Hoover's statement is as follows:

"One of the most deeply entrenched segments of crime is represented in the underworld activities of racketeers and professional hoodlums. I refer to the *vice barons*, those engaged in illegal gambling, commercialized prostitution, and illicit liquor operations as well as the narcotics peddlers and the strongarm racketeers whose lucrative illicit profits are derived from every stratum of our society. Many of these racketeers utilize interstate facilities and operate with impunity, if not in open defiance." . . .

Page 11

MR. KENNEDY:

Before the House committee I testified about the bills in some detail and I discussed them separately. I told the House committee that our investigation of the extent to which organized crime and racketeering have developed on an interstate basis convincingly demonstrated the need for new Federal laws. I cited several examples of how hoodlums and racketeers were able to operate beyond the reach of local authorities and

reap millions of dollars in illegal profits — using these profits to cheat honest Americans, *corrupt officials*, and corrode our national strength . . .

The need for action is clear and the question is what should be done and what can be done effectively *to control these hoodlums and racketeers who have become so rich and so powerful.*

These people use interstate commerce and interstate communications with impunity in the conduct of their unlawful activities. *If we could curtail their use of interstate communications and facilities,* we could *inflict a telling blow to their operations.* We could cut them down to size.

Mr. Chairman, our legislation is *mainly* concerned with effectively curtailing *gambling operations* . . .

It is very important that everyone realize that the Federal Government has a responsibility to use its interstate power or its taxing power to move against organized crime. Such crimes as gambling, prostitution, bribery, and *corruption of local officials* have been handled primarily by local authorities . . .

I wish to emphasize, Mr. Chairman, that we do not seek to preempt the field of enforcement or interfere in any way with the traditional responsibilities of local law enforcement . . .

It is essential in getting action against organized crime, which is so well organized and so well entrenched on a multistate basis that local law enforcement often is virtually powerless to act without aid and assistance of the Federal Government . . .

Page 15

Mr. Chairman, we have one more bill, S.1653, which is perhaps the most controversial and certainly one of the most important. We are seeking to take *effective* action *against the racketeer* who *conducts* an *unlawful business, but lives far from the scene in comfort and safety,* as well as against other hoodlums.

Let me say from the outset that we do not seek or intend to impede the travel of anyone *except persons engaged in illegal businesses* as spelled out in the bill. We specifically have outlined the illicit operations we seek to curtail as those involving gambling, liquor, narcotics, prostitution businesses or *extortion* or *bribery* in violation of State or Federal law.

The *target clearly is organized crime.* The travel that would be banned is travel *"in furtherance of a business enterprise" which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery. Obviously,* we are *not trying to curtail the sporadic, casual involvement in these offices,* but rather a *continuous* course of *conduct sufficient for it to be termed a business enterprise...*

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The racketeers and hoodlums in organized crime are becoming more powerful, more wealthy, and more menacing...Our purpose primarily is to prevent transmission of gambling information and equipment in interstate commerce; *prevent travel in support of "business enterprises"* involving gambling, liquor, narcotics, prostitution, or travel involving extortion or bribery and to give the FBI more tools to aid their fellow law enforcement officers.

American citizens who are *not* connected with *organized gambling* and *organized crime* have *nothing to fear* from these bills. *The only toes tread on here are those of the racketeers and hoodlums...*

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SUPPLEMENTARY STATEMENT OF AMERICAN CIVIL LIBERTIES UNION ON ANTI-RACKETEERING BILLS

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S.1653 AND H.R. 6572

Underlying the bill, we believe, is the same theory frequently invoked to justify the ever-increasing use by prosecutors of the doctrine of conspiracy. That theory states that if an individual cannot successfully be prosecuted for a substantive offense, he can perhaps be caught in the "elastic, sprawling, and pervasive offense of conspiracy" (Krulewitch v. United States, 335 U.S. 440, 445 (Jackson, J., concurring). Here, likewise, the bill implies that municipal and State law enforcement agencies are unable successfully to prosecute persons engaged in *organized racketeering* but that the Federal Government will be able successfully to prosecute the same individuals for acts in furtherance of thier "unlawful activity" if they engage in interstate or foreign commerce in the process...

As we read the proposed legislation, its principal elements are twofold: (1) *intent to perform* one of the enumerated acts in furtherance of an "unlawful activity," and (2) the act of traveling in interstate or foreign commerce *under the influence of the requisite intent*. . .

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STATEMENT OF RUFUS KING, ACCOMPANIED BY DOWNEY RICE, OF THE FIRM OF RICE & KING, ATTORNEYS AT LAW, WASHINGTON, D.C. APPEARING ON BEHALF OF THE AMERICAN BAR ASSOCIATION

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I can state unqualifiedly that the association and our section will be very interested in, and will stay very close to, these measures, and will do everything we can do to support the general purposes of the Attorney General.

SENATOR KEFAUVER:

That is a very welcome support, of course. The American Bar Association has a diligent committee in this field. . .

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SENATOR KEFAUVER:

What you have said is in S. 1643, they attempt to get away from or not include the social, casual gambler.

MR. KING:

In S. 1653 the same problem exists in a different way.

SENATOR KEFAUVER:

Not to include the *casual*, social traveler, such as somebody who would happen to go to Laurel, Md., to place a bet. *That is not a business enterprise.*

MR. KING:

With a criminal purpose. . .

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MR. KING:

This is a bill which attempts to outlaw travel by means of interstate commerce in connection with or in aid of certain offenses in the *organized crime category*. Several features of this bill trouble me very much.

In the first place, by centering only on travel, by centering only on use of interstate commerce for travel, you are attaching the Federal jurisdiction to perhaps one of the least important of the uses that *organized* crime makes of interstate commerce.

It follows that this measure would only be likely to catch the messenger, the go-between, the little person, the very person who is now usually amenable to local law enforcement, and not reach the big syndicate kind of operator behind him.

I have already discussed this matter of the vagueness implied in *"business enterprise," trying to impose a concept that is new to the courts,* and as far out of context as the words "business enterprise" when you are dealing with an area where by definition you are dealing with crime to begin with. *You are going to try to separate within criminal activities criminal activities which are a business enterprise from* criminal activities which are *individual* undertakings.

SENATOR KEFAUVER:

Mr. King, the Attorney General in his statement said the aiding and abetting statute would get the big fellows who did not cross the State lines who remained back in the State and sent out their runners across the State lines, under aiding and abetting.

MR. KING:

If you could prove the relation once more removed, with the difficulties of *"intent"* and *"knowingly,"* and if you could then prove a direct causative relationship between the messenger and the man whose business he was on — but actually that is my next point.

The burden of proving, the difficulty of proving, this specific intent, and the difficulties of tying anyone to a physical act like traveling across a State line by means of showing intent to *further a criminal business enterprise, seem to me very hard to surmount.*

SENATOR KEATING:

Furthermore, it is limited to *four business enterprises, gambling, liquor, narcotics, and prostitution.*

MR. KING:

Those are in the *Organized crime categories.* They fairly well cover the field of things where we believe, anyway, that the crime syndicates are operating . . .

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STATEMENT OF HERBERT MILLER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

SENATOR KEFAUVER:

What are you trying to do through this bill?

MR. MILLER:

This bill is designed to deny to people engaged in a particular type of conduct the right to travel in interstate commerce to further that type of conduct. The bill itself prohibits the travel in interstate commerce to aid or further what is defined as an unlawful business, *unlawful activity which is a business enterprise* involving *gambling, liquor, narcotics, or prostitution,* which are in violation of the laws of the State or of the Federal Government.

The first proviso covering distribution of the proceeds of any unlawful activity is quite clear, I believe. It is aimed at the man who travels around the country with substantial sums of cash, in effect *balancing the books of the layoff bettors throughout the country.*

SENATOR KEFAUVER:

He is just the agent. Would this aiding and abetting principle apply where he is working?

MR. MILLER:

It would, indeed, Senator.

SENATOR KEFAUVER:

The principal is in say Tennessee and he sends an agent out to Kentucky, Michigan, and New York to distribute money, the aiding and abetting statute would get the man's principal in Tennessee?

MR. MILLER:

That is our construction, sir. As the matter now stands, even if we know that a man is taking off in an airplane to go into another jurisdiction with a substantial amount of money, there is nothing we can do about it . . .

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SENATOR KEFAUVER:

The next question is, sir, *What is a crime of violence?* Does violence have a legal definition so that you could really tell what you were legislating against in subsection (2)?

MR. MILLER:

A crime of violence, I don't know that it would have a

legal definition, but it certainly would be easily definable, because *it would involve a crime wherein the person was injured, the person of* another party was injured, a crime of violence.

SENATOR KEFAUVER:

I know, but the man comes to the District of Columbia for the purpose of punching a guy in the nose. He doesn't do it, but that is what he came here for. Would that be a crime of violence?

MR. MILLER:

The *punching of a man* in the nose, an assault, *would be a crime of violence, yes.*

SENATOR KEFAUVER:

But he doesn't do it.

MR. MILLER:

If he didn't do it, frankly we would have a very difficult burden of proof under this bill. Senator, the way this bill is set up, and you have asked as a matter of fact a great and classic question that always comes up when this bill is discussed. Two men get together in New York and they decide that they are going to Washington, D.C., *to commit a crime of violence in furtherance of an unlawful business* enterprise. They agree they are going to do it. They tell several people they are going to do it. They get on the airplane and they fly to Washington, D.C.

They get to Washington, D.C., and they decide "Well, gee, we had better not do this, we are going to get in trouble." They get off the plane, they get on another plane and they fly back to New York, which is I think just exactly the question you asked. Would they at that stage of the game have violated that statute?

I would say, Senator, even assuming that they had violated the statute, we would have a very difficult time ever making a case out under this particular provision, because as a practical matter, in order for us to prove a case that will stand up in court, in practically every instance in proving the intent to travel in interstate commerce to do these certain things, *we are going to have to demonstrate that he actually performed some act* when he arrived at this destination in another jurisdiction . . .

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SENATOR KEFAUVER:

Sir, subsection 3—

> otherwise promote, manage, establish, carry on or facilitate the promotion, management, establishment, and carrying on of any unlawful activity.

I asked Mr. Kirby to look up the word "facilitate" in Webster's Dictionary and he reports that it means "to make easy, lessen the labor of."

Isn't that a pretty broad word? Would it apply to a horse owner who is transporting a race horse across a State line, or to a sports writer who is going across a State line to report a boxing match? Would not that

facilitate, or make easier, some unlawful activity, because if the horse didn't get there, there wouldn't be any race and gambling?

If the sports writer didn't give the information or his opinion, or if a sports writer gave his opinion about how some race was going to come off, that might make betting easier back somewhere.

MR. MILLER:

Senator, there is no question that subsection 3 is very broad, and it was made so broad designedly.

There is a substantial burden that the Government would have to undertake under this statute in order to prove a case. The reason is this.

We would have to prove first of all that there did exist a business enterprise involving gambling, liquor, narcotics, or prostitution, and further that the business was in violation of law, State or Federal . . .

Thus, we have attempted to limit this bill to the concept of *business activity* which we will have to prove, and further, then we say that once a man has traveled in interstate commerce and any steps that he takes in the State of his destination to further this business which is unlawful should be prohibited, and that is what we have attempted to do . . .

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SENATOR KEFAUVER:

Mr. Miller, you say that this only applies to things

where there is a business undertaking:

MR. MILLER:

I beg your pardon, with another exception, extortion or bribery.

SENATOR KEFAUVER:

The definition of "unlawful activities" is where you get that business limitation.

MR. MILLER:

Yes, sir; in subsection (b).

SENATOR KEFAUVER:

Why do you limit it to crimes in furtherance of a business activity? A person who comes from New York to the District of Columbia to commit murder, to rape, why don't you make him guilty?

MR. MILLER:

The reason for that is, Senator, that *we were attempting to limit the scope of this statute to certain types of business that we know are allied with organized crime.*

Now I grant you that there is no reason why it should be permissible for a man to travel in interstate commerce in order to commit murder, but one of the reasons why we did not include and encompass travel in interstate commerce to violate any statute, State or Federal, was an attempt to limit it to the ones we are actually trying to control, and that is *why we limited it to the four types of businesses which are* specified in subsection (b).

SENATOR KEFAUVER:

You have read a lot about Murder, Inc., in connection with Maffia activities in New York and New Jersey.

SENATOR KEATING:

The use of the word "Maffia" is very unfortunate.

SENATOR KEFAUVER:

I'll say Murder, Inc., then. And a person comes to the District of Columbia for the purpose of committing a murder, that would not be encompassed in this bill.

MR. MILLER:

Not unless he was committing the murder to further the unlawful business enterprise.

SENATOR KEFAUVER:
One of these four unlawful business enterprises.

MR. MILLER:
Yes.

SENATOR KEATING:

But if there was travel to commit murder, and the murder itself was for hire, *but it didn't have a connection with these four offenses, it would not be covered under this statute.*

MR. MILLER:

That is correct. We limit crime or violence to the furtherance of any unlawful activities, and as I say, Senator, the reason we did this is because we knew that there would be possibly some criticism of this bill as being rather broad, and we thought it would be a better bill from the standpoint of Congress *if we could limit it to these four types of enterprises, rather than,* in effect, enact or *ask Congress to enact a general statute* which would, in effect, *make any travel in interstate* commerce with intent to violate *any law, State or Federal,* violation of a Federal statute.

That is why the bill is indeed limited.

Now I can certainly sit here and agree with you, gentlemen, that a group of *conspirators* such as Murder, Inc., that Senator Keating referred to, if they travel in interstate commerce to commit murder, certainly that is something that is repugnant, and perhaps *should be made* a Federal crime.

But as I say, that was excised, *that concept was excised from this statute in order to permit a limited area in which interstate travel* would be *prohibited.*

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MR. MILLER:

Senator, there are really two concepts, I think, behind the fugitive felon statute, and the travel bill. The travel bill is *specifically* aimed at *organized crime* and that is why it was limited to the four types referred to . . .

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MR. MILLER:

Basically, what it would give us is this. Let me take a situation that now exists in the Middle West.

Racketeers have moved in, and they have in effect taken over the police force, and, if you will, the municipal government of the particular town. The place has been thoroughly corrupted. The State perhaps does not have adequate legal tools to cope with the situation.

At the present time *there is a good deal of travel* back and forth by the persons who have taken over this town in *interstate commerce,* and they do it to further the business they have built up there and to establish new businesses.

If we could show that they had traveled in interstate commerce, and that they had done so to *further this business in this town of* gambling, which is the fact that I am relating to you, that the gamblers in effect have taken over, you then would prove a violation, a *business operating* in violation of a State law; *and if you could show travel in furtherance of that business,* unlawful under State law, then the Federal Government would have investigative and prosecutive jurisdiction to step in and give aid and assistance in cleaning up that particular situation . . .

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MR. MILLER:

There are some who would feel, I think, perhaps, that

if you put one more criminal violation in, you are going too far. And in S. 1653, *we tried to tailor-make it,* so to speak, *to cover the people* that we are trying to get, namely *those engaged in organized* crime . . .

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SENATOR KEATING:

Or would you object to broadening it — you probably would object to broadening it — to include frauds generally, wouldn't you? . . .

MR. MILLER:

I would have one field of hesitancy, Senator, in broadening it, for this reason:

This *bill* as it now stands is *really aimed at what we call organized crime* today. When you get off into the field of criminal fraud and false pretenses, there is a rather substantial expansion of the crimes committed, because these crimes would be those which either violated the laws of the United States or State laws, and I frankly would not want to expand our jurisdiction to the point where we were overcommitted from an investigative and prosecutive standpoint, and where the line is, I am sure I don't know, but if we add certain additional offense, then you increase the scope of the investigation, and, of course, subsequent prosecution by the Federal Government.

Now, fraud as a practical matter is not normally the type of crime that you associate with organized crime. They make their money in gambling and in the other

things listed here, which you, I suppose generally could call a fraud on the public, in view of the odds they give . . .

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SENATOR ERVIN:

You contend that all gambling is a business enterprise.

MR. MILLER:

I do *not* contend that all gambling is a business enterprise.

SENATOR ERVIN:

A lot of people like to play poker just for social ability. If two or three members of the Department of Justice or two or three Senators were to cross the Potomac River for the purpose of engaging in a little poker game over in Alexandria—

SENATOR KEATING:

That could happen.

SENATOR ERVIN:

Could they be prosecuted for this?

MR. MILLER:

Senator, we would never prosecute—

SENATOR ERVIN:

That is not the question. *That is why I object* to bills of this kind. *I think that the law ought to treat all people alike* in like circumstances.

Now, if you want a bill to reach a gambling syndicate, that is in the business of gambling, you ought to draw a bill to reach that syndicate and not, for example, folks who want to play a little social game of poker.

Now, I do not play poker because I tried it many years ago and found out I did not have enough financial resources to pay the tuition fees, and I quit.

MR. MILLER:

Senator, if you will look at the definition of "unlawful activity," you will find that we use the term *"business enterprise:* in an attempt to get away from the very situation that you referred to.

We wanted to get the concept in of an *organized, going business.*

Now, you have the same concept today under the wagering stamp tax or the excise tax where, if a man is engaged in business, he is required to purchase an occupational gambling stamp.

And it was that same concept that we wanted to enforce here so that the poker party, as you say, which travels from the District to Virginia would not be covered.

SENATOR ERVIN:

Do you think that a man who engages in a crap game or a poker game for the purpose of supplementing his income is not engaged in the business of crime?

MR. MILLER:

The way you put it, *I could safely answer "No".* It would have to depend on the facts.

In other words, if three people get together for a friendly game of craps, if I may use the term, they are all independent of one another and they are all fighting one another because they are all attempting to win what is in the center of the carpet.

But where you have, as we had out in Loudoun County, a numbers operation which made substantial amounts of money in the District, and they take the proceeds and keep this business over in Virginia where they do not do any gambling, all the gambling being done in the District of Columbia, then I say, sir, yes, that is a *business enterprise.*

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You have got 25 to 50 people tied up in it, and this is a flow across the State lines, which I think Congress should prohibit.

The District of Columbia police cannot run out into Loudoun County.

SENATOR ERVIN:

Would not any person, who might not have any connection whatever with that business, who merely goes out to gamble, be engaged in a business and therefore be guilty?. . .

MR. MILLER:

NO.

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SENATOR CARROLL:

Once you open the door — and I am not saying we should not do it, but I think we ought to understand what we are doing — once we open the door in here there is no reason why we cannot legislate in any area affecting interstate commerce.

You are dealing in this bill with the people who make gambling, narcotics, prostitution, that sort of a thing; but this concept could be *broadened* across the board to any crime.

MR. MILLER:

It could be, yes. It could be broadened to any crime. Frankly, *that is why we limited it to the four* where we felt that there was a serious problem.

SENATOR CARROLL:

I am not only thinking, Mr. Miller, of today's necessity; I am looking into the future 2 years, 4 years, 10 years.

MR. MILLER:

Unquestionably, conceivably in the future, again I assume a need would be shown, *this concept could be expanded*. . .